

Application No: 09/821,183
Attorney's Docket No: US 010105

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the following remarks. Currently, claims 1-9, 11-19, 21, and 22 are pending in the present application of which claims 1, 6, 11, 16, 21, and 22 are independent.

Claims 1, 5-6, 11, 15, 16, 21, and 22 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Imagawa et al. (U.S. Patent Number 6,353,764) in view of Herrington et al. (U.S. Patent Number 6,922,843). Claims 2, 7, 12, and 17 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Imagawa et al. in view of Herrington et al. as applied to claims 1, 5, 6, 11, 15, 16, 21, and 22 and further in view of DeVito (U.S. Patent Application Number 2001/0056225). Claims 3, 8, 13, and 18 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Imagawa et al. in view of Herrington in view of DeVito as applied to claims 2, 7, 12, and 17 and further in view of Pijnenburg et al. (U.S. Patent Number 6,169,842). Claims 4, 9, 14, and 19 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Imagawa et al. in view of Herrington et al. as applied to claims 1, 5, 6, 11, 15, 16, 21, and 22 and further in view of Kimoto et al. (U.S. Patent Number 6,054,981). The above rejections are respectfully traversed for at least the reasons set forth below.

Claim Rejection Under 35 U.S.C. §103

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

Application No: 09/821,183
Attorney's Docket No: US 010105

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Therefore, if the above-identified criteria are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

Claims 1, 5-6, 11, 15, 16, 21, and 22 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Imagawa et al. in view of Herrington et al. This rejection is respectfully traversed because Imagawa et al. and Herrington et al., considered singly or in combination, fail to teach or suggest the claimed invention as set forth in claims 1, 6, 11, 16, 21, 22, and their dependents. This rejection is also respectfully traversed because there is no suggestion or motivation in either Imagawa et al. or Herrington et al. to combine the two references to achieve the claimed invention as set forth in claims 1, 6, 11, 16, 21, 22, and their dependents.

Imagawa et al. discloses a system for monitoring a user's gesture for controlling a device. The monitoring section continuously monitors people's attributes and their peripheral environment. The people's attributes include people's positions, postures, faces, expressions, eyes or head direction, motions, voices, physiological conditions, identities, forms, weights, sexes, ages, physical and mental handicaps, and belongings. The camera can be used to monitor

Application No: 09/821,183
Attorney's Docket No: US 010105

people's positions, postures, faces, expressions, motions, forms, and belongings in a non-contact manner. This monitored information is then used to control a device.

Herrington et al. discloses an interactive television program guide system with multiple account parental control features. The system may be switched between single account control and multiple account control. Each account may have a program control code and a purchase control code. A user may set parental control criteria for controlling access to programming for each account. A user may set purchase control criteria for controlling purchasing for each account. The system may remove a block on parentally-controlled activity when an authorized user enters an appropriate purchase or program control code. Every activity that matches any of the parental control criteria may be blocked and authorized user login may be required. The system may provide a selectable bypass locks feature. The system may present targeted advertising based on which code was entered last. The system may track account usage and provide information related to usage.

According to an embodiment of the invention, a method and apparatus are shown for monitoring user activity and automatically controlling a media player in response to predefined events. The disclosed media player controller includes one or more audio/visual capture devices focused on one or more users. The obtained audio and video information is processed by the media player controller to identify one or more predefined events.

Claims 1, 6, 11, 16, 21, and 22 recite analyzing additional information external to a user "wherein the additional information external to said user includes a feature of media" on the device or media player. The Examiner admits that Imagawa et al. fails to teach the analysis of

Application No: 09/821,183
Attorney's Docket No: US 010105

information external to a user which includes a feature of media on a device or media player as recited in claims 1, 6, 11, 16, 21, and 22. The Applicants also assert that Herrington et al. also fails to teach the analysis of information external to a user which includes a feature of media on a device or media player as recited in claims 1, 6, 11, 16, 21, and 22. The Examiner states that Herrington et al. "discloses a system wherein the additional information external to said user includes at least one feature of media on said media player" at Figure 4B. See Page 3, Third Paragraph. Whether or not a simple figure by itself, such as Figure 4B, can disclose an element including features or attributes of media on said media player is irrelevant because Herrington et al. does not disclose the analysis of this information. In fact, Herrington et al. is an interactive television program guide system with multiple account parental control which allows or disallows the viewing of information based on the user. This system has absolutely nothing to do with controlling a media device through audio or video means.

At least by virtue of Imagawa et al.'s and Herrington et al.'s failure to teach or suggest the above identified element of claims 1, 6, 11, 16, 21, and 22, a *prima facie* case of obviousness has not been established under 35 U.S.C. § 103. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claims 1, 6, 11, 16, 21, and 22. Claim 5 depends upon allowable claim 1 and claim 15 depends upon allowable claim 6. It is submitted that these dependent claims are also allowable at least by virtue of their dependencies. The Examiner is therefore respectfully requested to withdraw this rejection.

In addition, the Applicants assert that there is no motivation to combine Imagawa et al. with Herrington et al. The Official Action states that "it would have been obvious to add the

Application No: 09/821,183
Attorney's Docket No: US 010105

rating restriction from Herrington to the system disclosed by Imagawa." The Official Action alleges that the motivation resides in identifying users and the programming restricted for specific users. The Applicants assert that there is no motivation to do this especially to accomplish the subject matter of claims 1, 6, 11, 16, 21, and 22 as these claims have nothing to do with restricting user access to particular types of media. The subject matter of these claims relate to controlling a media player based upon analysis of information from one or more audio/visual capture devices focused on one or more users. This has no relation to the restriction of information based on the particular user. Therefore, there is no motivation to combine the teaching of Herrington et al. with Imagawa et al.

For at least the forgoing reasons, it is respectfully submitted that the Official Action fails to provide a proper motivation to combine Imagawa et al. with Herrington et al. and therefore fails to establish that claim 1, 6, 11, 16, 21, and 22 are rendered obvious under 35 U.S.C. § 103. Accordingly, the Examiner is respectfully requested to withdraw the rejection of these claims. Claim 5 depends upon allowable claim 1 and claim 15 depends upon allowable claim 6. It is submitted that these dependent claims are also allowable at least by virtue of their dependencies. The Examiner is therefore respectfully requested to withdraw this rejection.

Claims 2, 7, 12, and 17 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Imagawa et al. in view of Herrington et al. as applied to claims 1, 6, 11, and 16 and further in view of DeVito. Applicants submit that claims 1, 6, 11, and 16 are not obvious over Imagawa et al. in view of Herrington et al. In addition, the Official Action does not rely upon DeVito to make up for the deficiencies in Imagawa et al. and Herrington et al. with respect

Application No: 09/821,183
Attorney's Docket No: US 010105

to claims 1, 6, 11, and 16. Therefore, claims 2, 7, 12, and 17 which depend from claims 1, 6, 11, and 16, respectively, are allowable at least by virtue of their dependencies. The Examiner is therefore respectfully requested to withdraw the rejection of claims 2, 7, 12, and 17.

Claims 3, 8, 13, and 18 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Imagawa et al. in view of Herrington et al. in view of DeVito and further in view of Pijnenburg et al. The Applicants submit that claims 1, 6, 11, and 16 are not obvious over Imagawa et al. in view of Herrington et al. In addition, the Official Action does not rely upon DeVito or Pijnenburg et al. to make up for the deficiencies in Imagawa et al. and Herrington et al. with respect to claims 1, 6, 11, and 16. Therefore, claims 3, 8, 13, and 18 which depend from claims 1, 6, 11, and 16, respectively, are allowable at least by virtue of their dependencies. The Examiner is therefore respectfully requested to withdraw the rejection of claims 3, 8, 13, and 18.

Claims 4, 9, 14, and 19 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Imagawa et al. in view of Herrington et al. as applied to claims 1, 6, 11, and 16 and further in view of Kimoto et al. The Applicants submit that claims 1, 6, 11, and 16 are not obvious over Imagawa et al. in view of Herrington et al. In addition, the Official Action does not rely upon Kimoto et al. to make up for the deficiencies in Imagawa et al. and Herrington et al. with respect to claims 1, 6, 11, and 16. Therefore, claims 4, 9, 14, and 19 which depend from claims 1, 6, 11, and 16, respectively, are allowable at least by virtue of their dependencies. The Examiner is therefore respectfully requested to withdraw the rejection of claims 4, 9, 14, and 19.

Application No: 09/821,183
Attorney's Docket No: US 010105

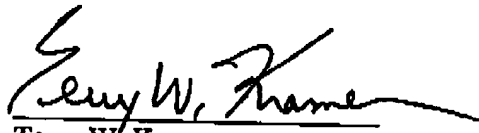
Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

While we believe that the instant amendment places the application in condition for allowance, should the Examiner have any further comments or suggestions, it is respectfully requested that the Examiner telephone the undersigned attorney in order to expeditiously resolve any outstanding issues.

In the event that the fees submitted prove to be insufficient in connection with the filing of this paper, please charge our Deposit Account Number 50-0578 and please credit any excess fees to such Deposit Account.

Respectfully submitted,
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